

Court No. 2

In the High Court of Uttaranchal at Nainital.

**First Appeal From Order No. 988 of 2001.
(Old No. 1140 of 1990)**

National Insurance Company Ltd.
having its Divisional Office at
M.G. Marg, Allahabad through
its Senior Divisional Manager.

.....Appellant/Opp.party.

Versus

(1)Rajendra Singh Negi,
Office of the Bhumi Sangrakshan
Adhikari, Apar Ganga, Gopeshwar.

(2)Sri Jai Krit Singh
R/o Village-Kuher, Tehsil & District-Chamoli,
..... Respondents.

Sri Lalit Belwal, learned counsel for the appellant.

Sri Rajendra Dobhal, learned counsel for the respondent No.2.

Dated: 16th Aug.,2004.

Hon'ble P.C.Verma,J.

Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellant-National Insurance Company Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.07.1990 passed by Motor Accident Claims Tribunal/District Judge, Chamoli in Motor Accident Claim Petition No. 11 of 1988,

Brief facts of the case giving rise to the present appeal are that on 14.02.1988 claimant Rajendra Singh Negi was travelling from Karn Prayag to Gopeshwar in Bus No. USY 03268; that at about 02.00 in the noon the aforesaid bus met with an accident near Baidanu (Langasu) in which Rajendra Singh Negi- claimant received injuries on his left shoulder and waist and his left leg was also

fractured. The claimant got himself treated at District Hospital, Gopeshwar from 14.2.1988 to 12.7.1988. The said bus was owned by Opp.party No.1 and insured with Opp.party No.2-National Insurance Company. The accident was caused due to rash and negligent driving of the vehicle (Bus). The injured was employed in the office of Bhoomi Sangrakshan Adhikari, Upper Ganga Gopeshwar and was earning Rs. 1200/- per month as his salary. The claimant has filed the claim petition for compensation of Rs. 50,000/- due to injuries received by him.

The Opp.parties contested the case before the Tribunal denying all the allegations except the insurance of the vehicle. On the pleading of the parties, the Tribunal framed the following issues:-

- (1) (a)Whether the accident occurred due to negligence of the driver?
(b)Whether the accident was occurred due to beyond control of the driver ?
- (2) Whether petitioner Rajendra Singh Negi was travelling in the aforesaid Bus and received injuries in the accident?
- (3) (a)How many amount the petitioner Rajendra singh Negi incurred on his treatment?
(b) How much amount is just and proper to award the petitioner on account of his treatment he incurred?
(c)Relief or amount of compensation to which the petitioner is entitled and the liability of National Insurance Company?

The Tribunal after recording the evidence, decided the issues in favour of the claimant and awarded the claim petition for Rs. 35,000/- as compensation in which the Opp. Party No.2- National Insurance Company was held liable to pay compensation amounting to Rs. 25,000/-.

The appeal was filed only on the ground that the appellant-Insurance Company had only statutory liability of Rs. 15,000/-per passenger while the Insurance Company has been held liable to pay Rs. 25,000/-. The learned counsel for the appellant submits that in view of the judgment of Apex Court in ***New India Assurance Co. Ltd. versus C.M. Jaya and others, reported in (2002) 2 Supreme Court cases 278***, the Insurance Company is liable to pay the statutory liability. Rest of the amount of award is to be paid by the owner of the vehicle in question. The owner was party before the Tribunal. The Tribunal has not bifurcated the amount after considering the insurance policy. Therefore, we provide that Rs. 15,000/- as statutory compensation alongwith interest shall be paid by the appellant-National Insurance Company Ltd. and rest of the payment shall be made by the owner of the vehicle in question. However, we do not find any infirmity or illegality in the impugned order on the basis of evidence on record in determining the compensation payable to the claimant.

Therefore, the compensation awarded by the impugned order is hereby affirmed. The appeal is partly allowed. The case is sent back to the Tribunal for bifurcation of the amount to be paid to the claimant by the Insurance Company and owner of the vehicle in question as per provisions of the old Act. The Tribunal concerned shall decide the matter within two months from the date of receipt of certified copy of this order after issuing notice to the owner of the vehicle in question. Sri Lalit Belwal, learned counsel for the appellant-National Insurance Company Ltd. undertakes to ensure that the Insurance Company will place the order of this Court to the Tribunal concerned within a month from today.

The amount already deposited in this case towards the compensation before the Tribunal shall be released forthwith in favour of the injured-claimant.

(B.S. Verma, J.)

(P.C.Verma, J.)

P.Singh